

TESTIMONY OF DR. JAMES SOUZA

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In the United States Federal District Court for the District of Idaho
Saint Alphonsus Medical Center-Nampa, Inc., et. al. v. St. Luke's Health System Ltd., et. al.
Case No. 1:12-cv-00560-BLW

Page Range: 5:6-5:6

5: 6 MS. PHILLIP: Good morning, Dr. Souza. My

Page Range: 10:15-11:4

10:15 Q. And did you become employed after you

10:16 completed your fellowship?

10:17 A. Yes.

10:18 Q. What employment did you have at that

10:19 time?

10:20 A. So for one year I worked at the Boise

10:21 VA Medical Center, and then I went into private

10:22 practice in the community with Idaho Pulmonary

10:23 Associates.

10:24 Q. Is that the same group you've been with

10:25 throughout your career from that point on?

11: Page 11

11: 1 A. In 2010 there was a split in the group,

11: 2 and I've been an employee of St. Luke's since

11: 3 2010. And we call ourselves St. Luke's Idaho

11: 4 Pulmonary Associates.

Page Range: 11:13-12:5

11:13 Q. Do you still use the acronym IPA to

11:14 represent the group?

11:15 A. S-L-I-P-A.

11:16 Q. S-L-I-P-A?

11:17 A. SLIPA. I guess you need another P to

11:18 be SLIPA, but.

11:19 Q. So for ease of reference, can we refer

11:20 to it as SLIPA today throughout the deposition?

11:21 A. Absolutely.

11:22 Q. For the time period after January 2010?

11:23 A. Sure.

11:24 Q. And prior to January 2010 did the group

11:25 refer to itself as IPA at times?

12: Page 12

12: 1 A. Yes.

12: 2 Q. Okay. So I may use the acronym IPA to
12: 3 refer to the group for the time period prior to
12: 4 January 2010.
12: 5 A. Sounds good.

Page Range: 12:15-13:8

12:15 Q. On what ad hoc committees did you serve
12:16 at Saint Alphonsus?
12:17 A. There was an ad hoc committee to
12:18 establish a mandatory intensivist consult in the
12:19 intensive care unit. There was an ad hoc
12:20 committee that was looking at pulmonary function
12:21 testing in the hospital and in our clinic in
12:22 trying to coordinate those efforts. And I was
12:23 invited to sit on the then CEO's -- I'm forgetting
12:24 the name of the committee that she had, but she
12:25 had a council in which physician group leaders
13: Page 13
13: 1 were invited to participate. I attended three or
13: 2 four of those meetings.
13: 3 Q. During what time period were you
13: 4 participating with the ad hoc committee regarding
13: 5 the mandatory intensivist consult?
13: 6 A. So my recollection of that is that it
13: 7 would have been in the timeframe of around 2004 to
13: 8 2005.

Page Range: 14:19-14:24

14:19 Q. I'm sorry. I see that. Do you have
14:20 any administrative roles at St. Luke's?
14:21 A. I do.
14:22 Q. Can you explain those roles for me.
14:23 A. I'm the vice president medical affairs
14:24 for the Treasure Valley region.

Page Range: 35:16-35:22

35:16 Did St. Luke's make the initial
35:17 approach to IPA about the possibility of acquiring
35:18 IPA?
35:19 A. No.
35:20 Q. How then did the possibility of
35:21 St. Luke's acquiring IPA first come about?

35:22 A. Dr. Bergquist approached St. Luke's.

Page Range: 39:1-39:5

39: 1 Q. Why did you want to be employed?
39: 2 A. We wanted the closest relationship
39: 3 possible because we believed that that would drive
39: 4 mutual goals more efficiently. We fundamentally
39: 5 did not believe in the old model any longer.

Page Range: 40:3-40:7

40: 3 Q. BY MS. PHILLIP: Did the practice seek
40: 4 competing bids from any other partners?
40: 5 A. Yes.
40: 6 Q. From whom?
40: 7 A. Saint Alphonsus.

Page Range: 49:12-49:18

49:12
49:13
49:14 REDACTED
49:15
49:16
49:17
49:18

Page Range: 49:19-49:22

49:19 Q. So the noncompete terms offered by
49:20 Saint Al's was not the reason for rejecting the
49:21 offer; is that correct?
49:22 A. That's correct.

Page Range: 74:23-75:16

74:23 Q. Prior to St. Luke's acquisition of IPA,
74:24 at what hospitals did you maintain privileges?
74:25 A. At Saint Alphonsus, at St. Luke's
75: Page 75
75: 1 Meridian, St. Luke's Boise, and Complex Care
75: 2 Hospital of Idaho, which is a long-term acute care

75: 3 hospital.
75: 4 Q. Which Saint Alphonsus hospitals did you
75: 5 have privileges at?
75: 6 A. In Boise.
75: 7 Q. And what type of privileges did you
75: 8 have at each?
75: 9 A. Active staff.
75:10 Q. And did active staff give you full
75:11 admission privileges at each of those hospitals?
75:12 A. Yes.
75:13 Q. And since the acquisition by
75:14 St. Luke's, have you relinquished your privileges
75:15 at any of those hospitals?
75:16 A. At Saint Alphonsus.

Page Range: 76:4-76:7

76: 4 Q. Did your partners similarly relinquish
76: 5 their privileges at Saint Alphonsus after the
76: 6 acquisition?
76: 7 A. Yes.

Page Range: 79:24-80:5

79:24 Q. So you said the acquisition took place
79:25 in January of 2010; is that correct?
80: Page 80
80: 1 A. That's correct.
80: 2 Q. And you stopped seeing patients at
80: 3 Saint Alphonsus all together in May 2010; is that
80: 4 correct?
80: 5 A. That's correct.

Page Range: 82:19-83:12

82:19 Q. When you became employed by St. Luke's,
82:20 was it your intention to stop taking call at Saint
82:21 Al's and admit all your patients at St. Luke's?
82:22 A. It was our -- it was my intention, I
82:23 did hope to simplify my life. Covering four
82:24 hospitals on call is a challenge. I think it was
82:25 also -- I think everybody in the group, when we
83: Page 83
83: 1 decided to become employees of the health system,
83: 2 you know, had a similar goal of simplification.

83: 3 Once it became clear that the group was
83: 4 not going to remain intact and that there was
83: 5 going to be a fracture, a split, it made it --
83: 6 everybody was worried through the entire process.
83: 7 We'd never wanted to leave anybody uncovered. The
83: 8 idea that, you know, critically ill patients, that
83: 9 people would be harmed by our decision was
83:10 unacceptable. So once it became clear that there
83:11 was going to be a split, frankly it made the
83:12 decision to go our separate ways much easier.

Page Range: 89:23-90:4

89:23 Q. But you don't send any patients to
89:24 Saint Alphonsus for any outpatient procedures?
89:25 A. Only if you count lab as an outpatient
90: Page 90
90: 1 procedure.
90: 2 Q. And you haven't done so since at least
90: 3 May 2010?
90: 4 A. Correct.

Page Range: 90:15-91:13

90:15 Q. And what percentage of those
90:16 ancillaries for which you refer patients do you
90:17 refer to St. Luke's facilities?
90:18 A. The vast majority. And that's because
90:19 my practice has changed over time. It's almost
90:20 exclusively now patients who are cared for by
90:21 either St. Luke's primary care physicians or
90:22 patients who have made a choice already that
90:23 St. Luke's is going to be their health system that
90:24 they want to get their care at.
90:25 Q. When did you start sending patients for
91: Page 91
91: 1 ancillaries almost exclusively to St. Luke's
91: 2 facilities?
91: 3 A. So it's changed, you know, over time.
91: 4 I would say it's really in the last probably 12 to
91: 5 18 months that it's so predominantly St. Luke's.
91: 6 And that's -- the reason radiology shifted is, I
91: 7 mean, it's in my statement, but our own radiology
91: 8 department had deficiencies compared to Saint
91: 9 Alphonsus. And I continued to use the Saint Al's
91:10 group until those deficiencies were remedied.

91:11 Q. And when in your opinion were those
91:12 deficiencies in radiology remedied at St. Luke's?
91:13 A. Around 18 months ago.

Page Range: 92:11-92:25

92:11 Q. When did you reduce your referrals to
92:12 Saint Alphonsus for radiology services?
92:13 A. So again it was a process. It happened
92:14 as -- as St. Luke's radiology improved its
92:15 services and got in my opinion again the best
92:16 trained chest radiologist in the valley, that
92:17 occurred over time.
92:18 You know, also over time I have lost my
92:19 Saint Alphonsus patients in part of my own doing
92:20 because I have -- if I've got a patient who is
92:21 cared for by a Saint Alphonsus Medical Group
92:22 primary care physician, I offer to send them to
92:23 one of my former partners for their pulmonary care
92:24 because I believe so fundamentally in the power of
92:25 an integrated system. I told my own parents that

Page Range: 93:9-93:16

93: 9 Q. How many patients specifically have you
93:10 sent to a Saint Alphonsus pulmonologist because
93:11 they were seen by a -- they have a SAMG primary
93:12 care physician?
93:13 A. I don't -- I don't know, but I mean, I
93:14 can at least -- at least three or four. Two come
93:15 to my mind immediately. And the physicians I sent
93:16 them to.

Page Range: 96:5-96:11

96: 5 Q. Prior to the acquisition, what
96: 6 percentage of your patients were you sending to
96: 7 Saint Alphonsus for ancillary services?
96: 8 A. Roughly 50 percent.
96: 9 Q. Okay. And by 2011 it had dropped to
96:10 about 10 percent?
96:11 A. Yes.

Page Range: 100:3-100:14

100: 3 Q. So if one of your patients that you see
100: 4 now has a St. Luke's primary care doctor and they
100: 5 don't state a specific preference for a
100: 6 specialist, you would refer them to a specialist
100: 7 within the St. Luke's system; is that accurate?
100: 8 A. I always ask the patient.
100: 9 Q. Oh, I understand that. But where the
100:10 patient does not state a specific preference, is
100:11 your process then to refer them to a St. Luke's
100:12 specialist --
100:13 A. It is.
100:14 Q. -- where available?

Page Range: 100:15-100:17

100:15 A. Because I fundamentally believe in the
100:16 power of that integration and that single medical
100:17 record, yes.

Page Range: 101:6-101:18

101: 6 Q. Are there any Saint Alphonsus
101: 7 specialists to which you are still referring
101: 8 patients?
101: 9 A. You mean employed by Saint Alphonsus?
101:10 Q. Employed or in a PSA.
101:11 A. Okay.
101:12 Q. Nondependent.
101:13 A. I believe neurology. I don't pay
101:14 attention to which of the neurologists is employed
101:15 by Saint Al's. But I have sent patients to
101:16 neurologists who are affiliated with Saint Al's I
101:17 would say and no longer have privileges at
101:18 St. Luke's.

Page Range: 102:12-103:6

102:12 Q. So the patients that you have referred
102:13 to a Saint Alphonsus neurologist since the
102:14 acquisition, what were the circumstances of that
102:15 referral?
102:16 A. Headache I believe.
102:17 Q. Okay. And what was the reason why you

102:18 referred them to a Saint Alphonsus neurologist as
102:19 opposed to a St. Luke's neurologist?
102:20 A. Oh, sorry. Let me try to remember the
102:21 specific example. I honestly don't -- I believe
102:22 it's because this patient who's one of my lung
102:23 transplant patients forwarded the physician's
102:24 name, "Are they a good doctor?" and I said "Sure."
102:25 Q. You're referring to this patient. Is
103: Page 103
103: 1 it the case there's only one patient you can
103: 2 recall that you have sent to a Saint Alphonsus
103: 3 neurologist since becoming acquired by St. Luke's?
103: 4 A. Yeah. I don't make very many neurology
103: 5 referrals, and only one, yes, only one person
103: 6 comes to my mind.

Page Range: 103:7-103:15

103: 7 Q. Do you know how many referrals you have
103: 8 made to St. Luke's neurologists since the
103: 9 acquisition?
103:10 A. I'm sorry, I don't. But it's more than
103:11 one. It might be -- it's not a common referral
103:12 because it's generally poor form I think for
103:13 specialists to refer to specialists. It should go
103:14 through the primary care doctor. So it might be
103:15 three or four.

Page Range: 150:15-151:14

150:15 MS. PHILLIP: I'd like to ask the court
150:16 reporter to mark as Plaintiffs' Exhibit 462 an
150:17 e-mail chain bearing the Bates number SLHS 4617.
150:18 (Plaintiffs' Exhibit 462 marked.)
150:19 Q. BY MS. PHILLIP: And the e-mail at the
150:20 bottom of this page includes an e-mail from a
150:21 Dr. Murali Bathina to Gary Fletcher, subject
150:22 "Saltzer," from December 2nd, 2011.
150:23 Who's Dr. Bathina?
150:24 A. He's a cardiologist.
150:25 Q. Okay. And in his e-mail Dr. Bathina
151: Page 151
151: 1 reports on a conversation that he had with you.
151: 2 Do you see that in the first line, "Just had a
151: 3 conversation with Jim Souza"?
151: 4 A. Yep.

151: 5 Q. Okay. In the second paragraph, he
151: 6 writes, "He and I and likely some other physicians
151: 7 are feeling like this whole, quote, 'physician
151: 8 led,' quote, mantra is a bunch of propaganda
151: 9 without real meaning. Why are we working on
151:10 standards and expectations for the system when the
151:11 system is making decisions based on dollars and
151:12 strategy regardless of quality?"
151:13 Did I read that accurately?
151:14 A. You read it accurately.

Page Range: 151:15-152:3

151:15 Q. Did you and Dr. Bathina discuss
151:16 concerns that Luke's decision to acquire the
151:17 Saltzer pulmonologists was based on dollars as
151:18 opposed to quality?
151:19 A. We discussed in this conversation my
151:20 personal and emotional reaction to Dr. Mark
151:21 Rasmus. That's what we discussed.
151:22 Q. And was there discussion about the
151:23 decision to bring him on being based on dollars
151:24 and strategy regardless of quality?
151:25 A. I didn't discuss that with him. What I
152: Page 152
152: 1 discussed with Dr. Bathina was, again, my
152: 2 completely emotional and slightly irrational
152: 3 reaction to Dr. Rasmus.

Page Range: 152:4-152:9

152: 4 Q. Did he express the viewpoint at all in
152: 5 the conversation that the decision to bring him on
152: 6 was based on dollars and strategy regardless of
152: 7 his quality?
152: 8 A. Not that I recall. He says that here,
152: 9 but I don't recall that.

Page Range: 153:7-154:15

153: 7 with Dr. Rasmus. Dr. Rasmus is a doctor I
153: 8 recruited to this valley. He was a member of my
153: 9 group. When we asked him to buy into our group
153:10 and he disagreed with the buy-in and the
153:11 opportunity to purchase real estate at valuation

153:12 and he insisted that he be allowed to purchase for
153:13 what previous people had purchased in at four
153:14 years earlier, we felt that was unreasonable. And
153:15 when he left the group, he sabotaged a recruit
153:16 that he was helping bring. And he attempted to
153:17 have one of our partners who's still in good
153:18 standing, Dr. Sasso, go with him to Saltzer. So
153:19 hopefully you can see that that was a completely
153:20 damaged relationship.
153:21 My reaction to this situation was not
153:22 my proudest leadership moment. It was selfish.
153:23 Leaders aren't selfish. They serve the people
153:24 they lead. And this was my emotional, selfish
153:25 reaction to Dr. Rasmus. We have turned a new
154: Page 154

154: 1 page. Dr. Rasmus and I are building a
154: 2 relationship. And we'll get there.
154: 3 With regard --
154: 4 Q. Now.
154: 5 A. Go ahead.
154: 6 Q. I didn't mean to cut you off. Go
154: 7 ahead.
154: 8 A. With regard to Dr. Sadaj, he is not
154: 9 like the rest of us pulmonologists. He is not a
154:10 fellowship-trained pulmonologist. He performs an
154:11 old fashioned version of some procedures like a
154:12 bronchs, bronchoscopy. We would be happy to help
154:13 him improve his skills through proctoring, through
154:14 the medical staff processes. But what colored
154:15 this conversation was a whole lot of emotion.

Page Range: 155:4-155:24

155: 4 Q. BY MS. PHILLIP: All right. In the
155: 5 fourth paragraph of his e-mail, Dr. Bathina writes
155: 6 that it will -- quote, "It will be very
155: 7 disappointing to us doctors who work on the west
155: 8 side to have to refer to these guys because they
155: 9 are now part of Luke's when we are fully aware
155:10 that they offer a far inferior product than what
155:11 our colleagues at IPA can provide."
155:12 Do you see that?
155:13 A. I do.
155:14 Q. Did you and Dr. Bathina discuss
155:15 frustration with having to refer to Saltzer
155:16 pulmonologists after the acquisition?
155:17 A. No. We wouldn't have discussed that,

155:18 because Dr. Bathina would know as well as I do
155:19 that referrals are not directed in the St. Luke's
155:20 system. I can refer to anybody that I want to
155:21 refer to.
155:22 Q. Well, then why would he write, "It's
155:23 disappointing to us doctors to have to refer to
155:24 these guys"?

Page Range: 156:2-156:2

156: 2 THE WITNESS: I don't know.

Page Range: 164:17-165:14

164:17 Q. I'd like to show you a document that
164:18 was previously marked at a prior deposition as
164:19 Plaintiffs' Exhibit 155, an e-mail chain between
164:20 yourself and several individuals including a
164:21 Dr. Nathan Andrew from October 16th, 2012.
164:22 A. Okay.
164:23 Q. And this relates to unclaimed call in
164:24 Nampa.
164:25 A. Right.
165: Page 165
165: 1 Q. Do you recall this e-mail chain?
165: 2 A. Yes.
165: 3 Q. If you'd turn to the first e-mail in
165: 4 the chain on the second page.
165: 5 A. Okay.
165: 6 Q. It starts with an e-mail from a
165: 7 Dr. Scott Shappard?
165: 8 A. Shappard.
165: 9 Q. Shappard. Relaying a story of a Luke's
165:10 ER doctor who attempted to refer to him a Nampa
165:11 patient. Who is Dr. -- did you say Shappard?
165:12 A. Shappard.
165:13 Q. Shappard.
165:14 A. He's a family medicine physician.

Page Range: 165:17-166:18

165:17 Q. In his e-mail Dr. Shappard states that
165:18 the patient refused the referral "because he wants
165:19 a provider in Nampa," in all caps. Do you see
165:20 that?

165:21 A. I see that.

165:22 Q. He then states in the next paragraph,
165:23 quote, "Nampa needs to have its own unclaimed
165:24 schedule. Folks in Nampa want care in Nampa
165:25 generally."

166: Page 166

166: 1 Do you agree with Dr. Shappard's
166: 2 statement that folks in Nampa want care in Nampa
166: 3 generally?

166: 4 A. It depends. It depends on convenience
166: 5 and the type of care. If they work in Boise, my
166: 6 experience is actually the opposite, that they're
166: 7 going to want to choose a Boise doctor who's close
166: 8 to where they work because that's when office
166: 9 hours are.

166:10 I think it also depends on quality. I
166:11 have patients still in my panel from the west
166:12 valley who choose to come to see me because of
166:13 a -- they're basically willing to travel to see me
166:14 because of the perceived quality.

166:15 Q. But you're a specialist; right?

166:16 A. I am a --

166:17 Q. Not a primary care physician.

166:18 A. I am a specialist.

Page Range: 166:24-168:1

166:24 Q. Okay. And in your e-mail from
166:25 October 16th, 2012 forwarding on Dr. Shappard's
167: Page 167

167: 1 concern, you write, quote, "I realize that as a
167: 2 St. Luke's facility we are using the Treasure
167: 3 Valley call list for unclaimed admissions. Having
167: 4 said that, we really should not be using that for
167: 5 follow-up in the primary care realm. The point
167: 6 that Dr. Shappard makes is a good one, I think.
167: 7 For patients, primary care should be easy to
167: 8 access."

167: 9 Do you still agree with your statement
167:10 here that primary care should be easy to access?

167:11 A. Wherever easy is for you. Yes.

167:12 Q. And you go on to state that, quote, "I
167:13 think most understand that more specialized care
167:14 may require travel."

167:15 Were you making the point here that
167:16 while patients may be more willing to travel for
167:17 specialized care, they prefer to get primary care

167:18 close to home?
167:19 A. The point I'm making here is we want to
167:20 be patient centered. It's like it's one of our
167:21 goals for this year, and so we've got to do what
167:22 the patient wants. If the patient wants care in
167:23 the place where their house is, let's do that. If
167:24 they want care in the place where they work, let's
167:25 do that. If they want care in Ketchum, let's do
168: Page 168
168: 1 that.

Page Range: 168:2-168:25

168: 2 Q. The whole point in this e-mail chain
168: 3 was the concern that unclaimed admissions from the
168: 4 Nampa ED should not be sent to primary care
168: 5 physicians in Boise or Meridian; right?
168: 6 A. And part of that has to do with my role
168: 7 as the vice president medical affairs. And in
168: 8 general the medical staff in Boise, which includes
168: 9 the -- so there's a freestanding ED that has this
168:10 call schedule, but it doesn't have a medical
168:11 staff. So the medical staff in Boise in general
168:12 had this perception that: Why am I getting calls
168:13 from this new emergency department in Nampa? And
168:14 I don't want to cover that new emergency
168:15 department in Nampa.
168:16 So part of the solution of engaging
168:17 those Nampa community physicians was if a patient
168:18 has chosen to go to the freestanding ED in Nampa
168:19 rather than the freestanding -- rather than the ED
168:20 in Meridian or in Boise, then presumably they want
168:21 to get care around there. So let's have a call
168:22 system that distributes those patients into
168:23 clinics around there. That was the idea. And it
168:24 was in part to heal the wounds with the medical
168:25 staff here.

Page Range: 180:11-181:2

180:11 Q. Fair enough. Are you aware of data
180:12 which indicates that the overall quality of spine
180:13 care at St. Luke's over the past three years has
180:14 not improved, that it in fact has declined?
180:15 A. I'm aware of Healthgrades data that
180:16 I -- and I'm just going to say I don't know the

180:17 details of that, but I believe scores for spine
180:18 surgery were low by Healthgrades, which in
180:19 subsequent investigation with my neurosurgical
180:20 colleagues in part has to do with documentation
180:21 failures.

180:22 Q. So Healthgrade scores have been low
180:23 over the past three years for spine care in the
180:24 St. Luke's system here in the Treasure Valley?

180:25 A. Yeah. I would say Treasure Valley is

181: Page 181

181: 1 what I'm familiar with. I don't know about Magic

181: 2 Valley and elsewhere.

Page Range: 181:3-181:12

181: 3 Q. Sure, I understand. So it would be
181: 4 incorrect to say that the quality of spine care in
181: 5 this community in the face of that evidence has
181: 6 improved over the last several years. Would that
181: 7 be true?

181: 8 A. I don't know about that. I think, I'm
181: 9 sorry, but I'm going to say that -- I mean, I know
181:10 how Healthgrades works, and I know how critical
181:11 documentation is. And Healthgrades is one way to
181:12 measure quality.